

## REMARKS

This Paper is submitted in response to the final Office Action mailed July 27, 2006. This Paper is filed within two months of the final Office Action mail date, namely September 27, 2006. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Claims 1-21 and 23-53 are currently pending in this application. Claims 22 and 54-120 have been canceled. Applicants respectfully request that this Paper be entered as it 1) places the claims in a condition for allowance, and 2) requires only a cursory review by the Examiner.

Claims 1-21, 23-34, and 48-53 were rejected under 35 U.S.C. §103(a) for allegedly being obvious over U.S. Patent No. 5,935,847 to Smith et al. (*Smith*) in view of U.S. Patent No. 6,759,245 to Toner et al. (*Toner*). Claims 36-46 were rejected under 35 U.S.C. § 103(a) over *Smith* in view of *Toner* and in further view of U.S. Patent No. 5,989,215 to Delmotte (*Delmotte*). Applicants respectfully disagree with and traverse these alleged rejections for the reasons set forth below.

*Smith*, *Toner*, and *Delmotte*, either alone or in combination, do not disclose or suggest a cell culture container having opposing peripherally sealed sidewalls, one of the sidewalls being gas permeable, and a fibrin matrix layer on a portion of an interior sidewall surface as recited in the present claims. *Toner* teaches away from a cell culture container having a gas permeable sidewall. *Toner* discloses a cell culturing device with rigid impermeable container walls 50. *Toner*, col. 2 lines 39-45; col. 11 lines 27-41. *Toner's* walls 50 are "impermeable to liquids and gases." *Toner*, col. 7 lines 54-59. As *Toner* discloses a cell culture container having impermeable container walls, *Toner* teaches away from the cell culture container having a gas permeable sidewall as recited in the present claims. Teaching away is a *per se* demonstration of non-obviousness. *In re Dow Chemical Co.*, 837 F.2d 469 (Fed. Cir. 1988). Consequently, any combination of *Smith* and/or *Delmotte* with *Toner* is likewise *per se* non-obvious.

The Examiner's contention that only portions of *Toner's* disclosure is being combined with the teachings of *Smith* is *prima facie* evidence of the improper application of hindsight. See Office Action dated July 27, 2006 at pp. 8-9. In particular, the Examiner states the following.

The Toner reference is only relied upon for its teachings regarding the merits of using a fibrin matrix layer to accommodate growing cells. The Toner reference is in no way relied upon for its teaching regarding the polymer construction of the container sidewalls.

Office Action dated July 27, 2006, p. 9 lines 19-22. The Examiner's contention stands in direct contrast to the well-settled patent law axiom that a reference must be viewed as a whole for what it reasonably discloses. *In re Wright*, 6 USPQ2d 1959 (Fed. Cir. 1988). To simply ignore the fact that *Toner's* cell culturing device has impermeable sidewalls 1) fails to consider *Toner's* disclosure as a whole, and 2) is clear evidence that the Examiner is using the Applicant's own disclosure as a template to piece together isolated portions of the prior art in order to deprecate Applicant's claims. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988); *In re Fritch*, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). Such a contention demonstrates hindsight reasoning and is improper as a matter of law.

Even if *Smith* was combinable with *Toner* (which it is not), *Smith* has no disclosure or suggestion of a support container with a fibrin layer on an interior sidewall surface as recited in the present claims. A reference cannot disclose or suggest that which it does not have. Nowhere in *Smith* is the term "fibrin" mentioned. Consequently, *Smith* cannot disclose or suggest a container having a fibrin layer. Indeed, *Smith* suggests a support container made only of plastic material as the electron charge (positive or negative) of *Smith's* container inner layer may be adjusted as necessary to promote cell growth. *Smith*, col. 6 line 66 through col. 7 line 19.

No motivation exists to combine *Delmotte* with *Smith*. *Delmotte* has no disclosure whatsoever directed to a supporting container having a fibrin layer. Rather, *Delmotte* discloses a dual chamber fibrin delivery device. The *Delmotte* device delivers fibrinogen from a first chamber and thrombin from a second chamber through a syringe to form a fibrin film. The fibrin film is applied to a body surface during surgery in order to reduce adhesions. *Delmotte*, col. 3 lines 45-61. Simply stated, *Delmotte* discloses forming a fibrin layer on a surface of body tissue. As *Delmotte* lacks any disclosure regarding a support container having a fibrin layer, no motivation exists to combine *Delmotte* with *Smith*.

In summation, *Toner's* teaching away is a *per se* demonstration of non-obviousness. Consequently, any combination of *Smith* and/or *Delmotte* with *Toner* is likewise *per se* non-obvious. *Smith* has no disclosure whatsoever regarding fibrin. No motivation exists to combine

*Delmotte* with *Smith*. Therefore, no combination of *Toner*, *Smith*, and/or *Delmotte* discloses or suggests the subject matter recited in the present claims.

### **CONCLUSION**

In view of the foregoing remarks, Applicants submit that claims 1-21 and 23-53 are in a condition for allowance and respectfully request a notice of the same.

Respectfully submitted,  
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